

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

AVENTIS PHARMACEUTICALS INC. and	)	
SANOFI-AVENTIS US LLC,	)	
	)	
Plaintiffs,	)	C.A. No. 06-286 (GMS)
	)	
v.	)	<b>REDACTED – PUBLIC VERSION</b>
	)	
BARR LABORATORIES, INC.,	)	
	)	
Defendant.	)	

**APPENDIX OF EXHIBITS REFERENCED IN BARR LABORATORIES'  
THREE RESPONSES TO PLAINTIFFS' MOTIONS *IN LIMINE***

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Karen L. Pascale (#2903)  
Karen E. Keller (#4489)  
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*Attorneys for Defendant Barr Laboratories, Inc.*

April 7, 2008

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**CERTIFICATE OF SERVICE**

I, Karen L. Pascale, Esquire, hereby certify that on April 14, 2008, I caused to be electronically filed a true and correct copy of the foregoing public version document, ***Appendix of Exhibits Referenced in Barr Laboratories' Three Responses to Plaintiffs' Motions in Limine***, with the Clerk of the Court using CM/ECF, which will send notification of such filing to the following counsel of record:

Steven J. Balick, Esquire [sbalick@ashby-geddes.com]  
John G. Day, Esquire [jday@ashby-geddes.com]  
Tiffany Geyer Lydon, Esquire [tlydon@ashby-geddes.com]  
ASHBY & GEDDES  
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I further certify that on April 14, 2008, I caused a copy of the foregoing sealed document to be served by e-mail and hand delivery on the above-listed counsel and on the following non-registered participants in the manner indicated:

**By E-Mail and FedEx**

Paul H. Berghoff, Esquire [berghoff@mbhb.com]  
Joshua R. Rich, Esquire [rich@mbhb.com]  
Jeremy E. Noe, Esquire [noe@mbhb.com]  
MCDONNELL BOEHNEN HULBERT  
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**YOUNG CONAWAY STARGATT & TAYLOR, LLP**

*/s/ Karen L. Pascale*

---

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EXHIBITS A-F  
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# EXHIBIT G

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mrurka@winston.com

February 1, 2008

**VIA FACSIMILE AND EMAIL**

Jeremy E. Noe  
McDONNELL BOEHNEN HULBERT  
& BERGHOFF LLP  
300 South Wacker Drive  
Chicago, Illinois 60606

**Re: *Aventis Pharms., Inc., et al. v. Barr Labs., Inc.,*  
No. 06-286 (GMS) (D. Del.)**

Dear Jeremy:

We write to inform you of the experts that Barr intends to use at trial to testify to the various aspects of obviousness (level of ordinary skill in the art, scope and content of the prior art, the disclosures of the prior art and obviousness).

Dr. Maureen Donovan will testify regarding the level of ordinary skill in the art. Dr. Thomas Needham will testify regarding the scope and content of the prior art, the prior art disclosures and obviousness.

As we stated, we do not intend to present more than one Barr expert on any one subject at trial.

Very truly yours,



Maureen L. Rurka

cc: Steven J. Balick (via email)  
Josy W. Ingersoll (via email)

# EXHIBIT H

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February 21, 2008

**VIA HAND DELIVERY**

Jeremy E. Noe  
McDONNELL BOEHNEN HULBERT  
& BERGHOFF LLP  
300 South Wacker Drive  
Chicago, Illinois 60606

Re: *Aventis Pharms., Inc., et al. v. Barr Labs., Inc.,*  
No. 06-286 (GMS) (D. Del.)

Dear Jeremy:

Enclosed are the following expert reports, served on behalf of Barr Laboratories,  
Inc.:

- 1) Reply Report of James Morrison;
- 2) Expert Report of Harry C. Boghigian;
- 3) Reply Expert Report of Barry A. Siegel, M.D.; and
- 4) Responsive Report of Dr. Ian S. MacKay.

Please be aware that we will offer at trial the testimony of only one expert witness on each subject, in accordance with the Court's rules. Please contact me if you have any questions.

Very truly yours,



Maureen L. Rurka

cc: Steven J. Balick (via Federal Express, with enclosures)  
Josy W. Ingersoll (via Federal Express, with enclosures)

EXHIBITS I-J  
REDACTED  
IN ITS ENTIRETY

# EXHIBIT K



McDonnell Boehnen Hulbert & Berghoff LLP

300 South Wacker Drive 312 913 0001 phone  
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February 1, 2008

**VIA E-MAIL (mrurka@winston.com)**

Ms. Maureen Rurka  
Winston & Strawn LLP  
35 W. Wacker Drive  
Chicago, IL 60601-9703

Re: Aventis Pharmaceuticals, Inc. v. Barr Laboratories, Inc.  
Civil Action No. 06cv286 (GMS)  
U.S. District Court for the District of Delaware

Dear Maureen,

Further to our teleconference of earlier this afternoon, we write to inform you of the experts that Aventis intends to use at trial to testify to infringement and the various aspects of non-obviousness.

Infringement - Dr. Meltzer will testify to the ultimate conclusion on infringement, relying on the opinions of Drs. Berridge, Lochhead, and Prud'homme for subsidiary issues related thereto.

Level of Ordinary Skill in the Art - Dr. Meltzer.

Non-obviousness - Dr. Lochhead will testify to the ultimate conclusion on non-obviousness, relying in part on the opinions of other experts' for subsidiary issues related thereto.

Scope and content of alleged prior art asserted by Barr - Dr. Lochhead, Dr. Meltzer, and Dr. Kaliner will testify on different aspects of the scope and content of the alleged prior art.

Differences between the prior art asserted by Barr and the claims at issue - Dr. Lochhead, Dr. Meltzer, and Dr. Kaliner will testify.

Anticipation - Dr. Kaliner will testify to the ultimate conclusion on anticipation, relying in part on the opinion of Dr. Lochhead for subsidiary issues related thereto.

Written Description - Dr. Kaliner will testify.

Enablement - Dr. Berridge will testify.

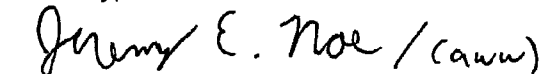
In response to your particularized request for clarification regarding the alleged overlap in Dr. Lochhead's and Dr. Prud'homme's opinions based on paragraphs 21-24, 29 and 30 of Dr. Prud'homme's report, and paragraphs 5-9 and 14-15 of Dr. Lochhead's report, respectively, we respond as follows:

Dr. Lochhead will testify on the issues discussed in paragraphs 5-9 in his opening report; Dr. Prud'homme will not testify on paragraphs 21-24.

Dr. Prud'homme will testify on the issues discussed in paragraphs 29-30 in his opening report; Dr. Lochhead will not testify on paragraphs 14-15.

Please feel free to contact us directly if you have any questions.

Sincerely,



Jeremy E. Noe  
(312) 935-2370  
noe@mbhb.com

c: John G. Day - [JDay@ashby-geddes.com](mailto:JDay@ashby-geddes.com) - Via E-mail  
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EXHIBITS L-P  
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# EXHIBIT Q

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March 26, 2008

**BY EMAIL**

Andrew W. Williams  
McDonnell Boehnen Hulbert  
& Berghoff LLP  
300 South Wacker Drive  
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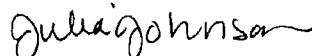
**Re:    *Aventis Pharms., Inc., et al. v. Barr Labs., Inc.*, No. 06-286 (D. Del.)**

Dear Andrew:

Although, as the deposition transcript of Dr. Mackay makes clear, we were under no obligation to produce this document, enclosed is a document bearing bates numbers BARR-MACKAY-000257 – BARR-MACKAY-000267. As an additional courtesy which we were under no obligation to provide, the website that Dr. Mackay mentioned can be found at <http://www.hhs.gov/asl/testify/t980402a.html>.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Julia Mano Johnson

Enclosure

EXHIBIT R  
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# EXHIBIT S



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March 7, 2008

**VIA E-MAIL (mrurka@winston.com)**

Ms. Maureen Rurka  
Winston & Strawn LLP  
35 W. Wacker Drive  
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Re: Aventis Pharmaceuticals, Inc. v. Barr Laboratories, Inc.  
Civil Action No. 06cv286 (GMS)  
U.S. District Court for the District of Delaware

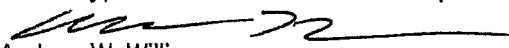
Dear Maureen,

We write in response to your letter of March 6th, 2008 regarding certain aspects of Dr. Meltzer's rebuttal of Drs. Donovan and Needham's opinions regarding "odorlessness."

In response to your inquiry regarding the bases for Dr. Meltzer's "odorlessness" opinion, we confirm that we intend to present Dr. Meltzer for testimony based on all supporting evidence.

Further, we are disappointed by the accusations found in your letter, and we note that we have already responded to all of the points you have raised. Not only did Dr. Meltzer identify early in the deposition the article he was adding in support of his already-existing rebuttal of the opinions expressed by Drs. Donovan and Needham, copies of the article were provided to you early in the deposition. Thus, the arguments contained in your letter are simply wrong factually.

Sincerely,

  
Andrew W. Williams  
312 913 3301  
williams@mbhb.com

c: John G. Day – [JDay@ashby-geddes.com](mailto:JDay@ashby-geddes.com) – Via E-mail  
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March 19, 2008

VIA EMAIL

Joshua R. Rich  
McDONNELL BOEHNEN HULBERT  
& BERGHOFF LLP  
300 South Wacker Drive  
Chicago, Illinois 60606

Re: *Aventis Pharms., Inc., et al. v. Barr Labs., Inc.,*  
No. 06-286 (GMS) (D. Del.)

Dear Josh:

We write in response to your letter of yesterday purporting to memorialize our telephone conference yesterday.

First, we completely disagree with your assertions that we were supposed to offer Dr. Mackay's response to Dr. Meltzer's opinions relating to secondary considerations of non-obviousness before the parties agreed-upon date of February 21, 2008. As we have repeatedly explained, and you have yet to refute, his reply report is directed to secondary considerations of non-obviousness. Furthermore, as we have repeatedly represented, we do not intend to offer more than one expert opinion on any subject at trial. Your complaint that it is "patently unfair" that we will not accede to your brand new demand that we identify who will be testifying at trial on odorlessness is undermined by your own conduct in this case. Plaintiffs have offered significant overlapping testimony from a number of experts on a number of issues, including viscosity testing, potency of steroids, odorlessness, and scope and content of prior art, just to name a few. Unlike us, Plaintiffs have not stated that they will not offer more than one expert on any subject. Your complaint is without merit.

Second, your attempt to recharacterize Dr. Meltzer's additional opinion on odorlessness as only an "additional basis" for his opinion is also without merit. Whatever you want to call it, he was required under Fed. R. Civ. P. 26 to put it in his expert report. He did not. Moreover, you still have not agreed to withdraw the additional opinion of Mr. Beers, raised at

WINSTON & STRAWN LLP

Joshua R. Rich  
March 19, 2008  
Page 2

the end of his deposition on redirect questioning from Aaron Barkoff. As you have refused to withdraw either of these additional opinions, you, yet again, have no basis to complain.

Third, you attempted during the telephone conference to create a brand new "meet and confer" on the topic of Dr. Mackay's deposition -- an issue that you, until yesterday, had not raised. A demand for documents during a deposition, documents to which you are not entitled, does not constitute a properly raised issue that we can fully address during a meet and confer on a completely different topic. We never received any letter following his deposition that identified either what you sought or your basis for seeking it. Neither party ever discussed or agreed to a telephonic meet and confer on this topic. Yet in the middle of our telephone conference on an entirely different issue, you attempted to raise this issue, demanding, without stating a single basis, an additional deposition of Dr. Mackay or the withdrawal of some unidentified portion of his report. At the time, we had not yet reviewed Dr. Mackay's deposition transcript and you had not yet specifically identified what documents you sought. Moreover, you still have not identified what portion of Dr. Mackay's report you want us to withdraw or your basis for that demand. Therefore, we did not refuse any meet and confer, notwithstanding your current attempt to manufacture a record to the contrary.

Having now reviewed his deposition transcript, it is clear that he was not required to produce or identify documents "related to the deposition pattern of sprays in the nasal cavity." He plainly stated that he did not consider those documents in preparing his opinions:

7 Q. I'm not asking whether you relied or  
8 not. I'm -- I'm asking whether you considered it  
9 in forming your opinion.

10 MS. JOHNSON: Same objection, asked and  
11 answered, beyond the scope of the expert reports.

12 BY THE WITNESS:

13 A. I think the bottom line probably is no.

\* \* \*

6 Q. Okay. And did you have that research in  
7 mind in any way when you were forming your  
8 opinions?

9 MS. JOHNSON: Objection; vague.

10 BY THE WITNESS:

11 A. Not that specific reading, no.

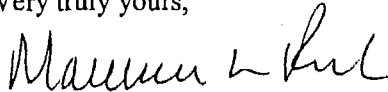
WINSTON & STRAWN LLP

Joshua R. Rich  
March 19, 2008  
Page 3

Accordingly, you have no basis for your demand that we produce the references, nor do you have any basis to demand that we withdraw whatever portion of his expert report you have yet to identify as requiring withdrawal. Nevertheless, despite the fact that we have no obligation whatsoever to produce the references, when we have had an opportunity to review those references (assuming Dr. Mackay is able to identify them), we will make a determination of whether we will produce them in the spirit of cooperation. We have taken under consideration your demand that we produce the websites regarding CFCs, but we will not be prepared to have a meet and confer on either of these topics until Monday morning. As you know, there are three depositions of Barr's experts that have yet to be completed this week, motions in limine due tomorrow, and our responsive draft to the PTO due Monday. We are occupied with preparing for those deadlines.

We are not obligated to, nor will we, accede to your unreasonable demands for an immediate meet and confer, before we have had time to fully consider the brand new issues you have raised simply because you have created your own emergency by failing to raise these new issues in sufficient time for us to fully examine and address them. We will be available Monday for a meet and confer.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Maureen L. Rurka".

Maureen L. Rurka

cc: Steven J. Balick (via email)  
Josy W. Ingersoll (via email)